

Appendix P:

Mark-to-Market Requirements for Projects with Flexible Subsidy Loans

Flexible Subsidy Program Description. Flexible subsidy funds were provided to owners of eligible projects through direct loans from HUD, subordinated to the HUD insured first. There are two types of Flexible Subsidy loans with different loan terms and conditions that impact M2M restructurings:

- A. Operating Assistance (OA) Loans and HUD Earthquake Loan Program (HELP) which were generally surplus cash notes (soft debt), not secured by the project, and which required repayment upon prepayment (including refinance) of the first, and
- B. Capital Improvement (CI) Loans which were required to be secured by the project, and were generally fully amortizing loans with required monthly payments to principal and interest.

General. The PAE must review the executed loan documents for any Flex loan to determine the specific terms and conditions applicable to the transaction. The processing guidance that follows **assumes Flex loans are structured as described above**; if there are variations, contact your Relationship Manager for additional guidance.

Identification. Flex loans should be identified on the Loan Input worksheet of the M2M underwriting model as either Secondary or Tertiary Loans. Do not include any Flex loans on the Loan Input worksheet under “UPB for Loans to be Restructured”. Since Flex was provided as a direct loan from HUD (not FHA insured), Flex loan amounts cannot be included in the FHA claim. Clearly identify the type of Flex loan and the specific loan terms and conditions. Ensure that all Flex loans are identified (some projects received more than one allocation).

Processing Guidance.

A. Lites without refinance/prepayment

- 1. **OA/HELP Loans:** Ignore the OA/HELP loan in the debt service coverage analysis.
- 2. **CI Loans:** Include the required payments to P&I in the debt service coverage analysis. If the transaction would be viable as a Lite only if the CI loan is modified to reduce the interest rate, principal amount or amortization (or written off), the PAE should not recommend approval as a Lite; those changes warrant a Full restructuring.

B. Lites with refinance/prepayment

1. **OA/HELP Loans:** Ignore the OA/HELP loan *in the Lite debt service coverage analysis only*. A Lite with a refinance must include either modification, write-off or repayment of the OA/HELP loan. Modifications or write-off of OA/HELP loans must be processed by the Multifamily Hub/Program Center with jurisdiction. (Note, the regulatory waivers obtained by OMHAR to do modifications for Fulls are not applicable to Lites.)
2. **CI Loans:** Same as 1.b. above.

C. Fulls

1. **OA/HELP Loans:** Ignore the OA/HELP loan *in the debt service coverage analysis only*. These loans will generally continue as soft, unsecured debt, not included in the restructured M2M debt. Modifications to accomplish this are addressed below.
2. **CI Loans:** Ignore the CI loan *in the debt service coverage analysis only*. These loans will generally be converted to soft, unsecured debt (see below) and will not be included in the restructured M2M debt.

Required Modifications and Subordinations.

A. Lites without refinance/Prepayment:

1. **OA/HELP:** No modifications needed without refinance/prepayment.
2. **CI:** N/A. Modifications of CI loans may only be handled in the context of a Full restructuring.

B. Lites with refinance/prepayment:

1. **OA/HELP:** Contact the local HUD office with jurisdiction to request either write-off or modification of the OA/HELP loan. If modified, the loan term must be extended and the repayment requirement deferred until the expiration of the term of the refinanced first.
2. **CI:** N/A. Modifications of CI loans may only be handled in the context of a Full restructuring.

C. Fulls:

1. **All transactions - Restructuring Commitment.** The PAE must identify required modifications of Flex loans in the M2M Restructuring Commitment based on review of the specific loan documents and use agreements. If any of

the Flex loan documents were recorded, required subordinations must also be identified.

2. **All transactions - drafting of legal documents.** PAE's Counsel must draft the necessary modifications and subordinations of the Flex loan documents and ensure that they are executed at the M2M Closing. (Since these loan documents vary considerably, a sample format is not provided. PAE Counsel must submit draft documents to the OMHAR Closing Team for review as soon as possible after issuance of the RC so any necessary legal comments can be incorporated without delaying Closing.) Execution of the M2M Rider to the Regulatory Agreement and the applicable modifications below will entitle the owner to receive the standard M2M distributions (up to 25% of cash flow) as long as an M2M mortgage is outstanding, deferring surplus cash payments which would otherwise be required toward the Flex loans.
3. OA/HELP: Modify the OA/HELP note to defer repayment until the end of the M2M debt and extend the loan term, if necessary. The term of the OA/HELP must be at least commensurate with the term of the M2M debt. If the OA/HELP mortgage or Use Agreement was recorded, see 4.) below.
4. CI:
 - a) Modify the terms of the CI note to convert it to unsecured, soft debt at 1% interest which does not compound and defer payments to P&I until the end of the M2M debt.
 - b) If the Flex CI mortgage was recorded, a release of the mortgage/deed of trust, converting it to unsecured, soft debt must be executed and recorded.
 - c) If the Flex Use Agreement was recorded, it must be subordinated to the Mark-to-Market Use Agreement.

Closing Issues.

The PAE Closing Attorney must promptly (within 5 days of closing) provide copies of all Flex modifications to the HUD Accounting office that services Flex loans. This must be done promptly to avoid the servicer declaring a Flex loan in default because they have not been informed of the loan modifications. Send the following information to HUD, CFO, Flex Loan Branch, PO BOX 901013, Ft Worth TX 76101:

- 1) a cover letter/memo clearly stating this project is being restructured under M2M, and identifying the original HUD insured project number and project name. Advise if the old number will stay with the project, or provide the new FHA number if it will have new FHA insurance. Provide names and numbers for PAE and OMHAR RO contacts in case there are questions.
- 2) provide copies of all modified Flex documents and a copy of the front page of the original note being modified.